IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.08.2017

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**THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

W.P.No.31665 of 2002

T.Aruna .. Petitioner

Vs

1.The Secretary,
North Arcot District Consumers
Co-operative Wholesale
Stores Ltd.,
Officers Line,
Vellore.

2.The Deputy Registrar of
Co-operative Societies,
Vadivel Nagar,
Vellore – 1.

3.The Principal District Court,
Vellore,
Vellore District. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the third respondent in C.T.A.No.6/96 and quash the judgment and decree dated 28.03.2001 passed in C.T.A.No.6/96 and to order any other remedy.

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For Petitioner .. Ms.S.Thamizharasi

For Respondents .. Mrs.T.Girija,
Govt. Advocate for R1 and R2

**ORDER**

This writ petition has been filed to call for the records of the third respondent in C.T.A.No.6/96 and quash the judgment and decree dated 28.03.2001 passed in C.T.A.No.6/96.

2. The case of the petitioner is that she was working as sales woman at Karpagam Co-operative Society Super Market, at Vellore from 27.11.1989 to 6.8.1981. The invoices and credit bills were prepared by her correctly and the amount was also correct. While so, the bills prepared at the Head Office of the respondent contained certain discrepancies for which, she was not responsible. The respondent filed the arbitration case against her claiming that she has made false entries in the credit bills and misappropriated the amount. Thus, the respondent claimed Rs.1,16,520.75 from her. Since the respondent threatened the petitioner with the order of dismissal, she some how raised the amount and made good the same though she was not legally liable to pay the said amount. After payment of the

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entire amount, the respondent herein demanded interest for the same at the rate of 20% per annum. Since she was not responsible or liable to pay the amount, she refused to pay the same. Hence, the respondent filed arbitration case against the petitioner in A.R.C.No.184-94-95, on the file of Deputy Registrar of Co-operative Societies, Vellore under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983. The arbitrator passed judgment dated 28.02.1995 in A.R.C.No.184-94-95. Against the same, she preferred an appeal before the third respondent under Section 152 (1) (A) of the Tamil Nadu Co-operative Societies Act, 1983, in C.T.A.No.6/96.

3. It is the case of the first respondent that the petitioner had committed a huge loss to the store by way of committing deficit to the stock to the value of Rs.1,16,520.75. According to the first respondent, the petitioner had committed misappropriation to a sum of Rs.1,16,520.75. Thereafter, the first respondent initiated arbitration proceedings against the petitioner in A.R.C.No.184-94-95 before the Deputy Registrar of Co-operative Societies, Thiyagarajapuram, Vellore, who is the second respondent herein for recovery of a sum of Rs.1,16,520.75 under Section 90 of the Tamil Nadu Co-operative Societies Act. During the pendency of the arbitration proceedings before the second respondent, the petitioner

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had paid a sum of Rs.1,16,520.75 to the first respondent.

4. Even though the petitioner had paid the sum of Rs.1,16,520.75, which is the value of the misappropriated goods, the Arbitrator passed an award dated 28.08.1995 as regards the claim of interest alone. The learned Arbitrator directed the petitioner to pay a sum of Rs.94,196.80, which is the interest calculated at the rate of 20% per annum from 25.07.1991 on the principal amount of Rs.1,16,520.75 till 28.08.1995, being the date of the Award. Aggrieved by the award dated 28.08.1995 passed by the learned Arbitrator, the petitioner preferred an appeal before the Principal District Court, Vellore, the third respondent. The learned Judge after perusing the award dated 28.8.1995 and after considering the arguments advanced by the learned counsel on either side, confirmed the award passed by the learned Arbitrator in A.R.C.No.184-94-95 and dismissed the appeal. Aggrieved by the award passed by the learned Arbitrator and the judgment and decree dated 28.03.2001 passed by the learned Judge, the petitioner has filed the present writ petition.

5. During the pendency of the arbitration proceedings, she paid the principal amount of Rs.1,16,520.75 to the first respondent, which

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is not disputed by the learned counsel for the respondent.

6. According to the learned counsel for the petitioner, the petitioner was initially suspended from service and terminated thereafter.

7. According to the learned Government Advocate appearing for the first and second respondents, the interest at the rate of 20% per annum levied on the petitioner for the delayed payment is reasonable.

8. The only question involved in this writ petition is as to whether interest at the rate of 20% per annum is payable by the petitioner to the first respondent.

9. Admittedly, neither there is a contract nor the Tamil Nadu Co-operative Societies Act, 1983 provides for payment of any interest in case of delayed payment for proceedings initiated under Section 90. Even though there was an allegation that the criminal prosecution was launched against the petitioner for the alleged misappropriation, the learned Government Advocate appearing for the first and second respondents has not placed any documentary proof before this Court to establish that criminal prosecution was

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indeed launched against the petitioner for misappropriation of goods.

10. The learned counsel for the petitioner submitted that the petitioner is not liable to pay any interest as she has already refunded the amount during the pendency of the arbitration proceedings. The learned counsel further submitted that there is no basis on which, the learned Arbitrator directed the petitioner to pay interest from 25.07.1991 and that too, at the exorbitant rate of 20% per annum. Hence, she requested this Court to set aside the impugned order passed by the third respondent and to allow the writ petition.

11. The learned Government Advocate submitted that the Co-operative Societies availed cash credit facilities in N.A.A. District Co-operative Central Bank with interest. As the petitioner has committed misappropriation to the tune of Rs.1,16,520.75, the learned Arbitrator rightly awarded the penal interest on the petitioner and the same is also confirmed by the third respondent. But, no documentary evidence has been placed before this Court by the first respondent to establish that they are borrowing money from North Arcot District Co-operative Central Bank at a particular rate of interest. Despite, the first respondent being given an opportunity by an order of this Court on 21.07.2017, they failed to produce details of interest at

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which they are borrowing from North Arcot District Co-operative Central Bank.

12. The learned Government Advocate for the respondents in support of her submissions relied on the decision of the Division Bench of this Court reported in **2017 (3) L.W. 565** in the case of **The Secretary, K.1161 Kalingarayan Palayam Primary Agicultural Co-operative Credit Society Ltd., vs. Chinnusamy and another** submitted that Section 34 of the Code of Civil Procedure will not apply for the Tamil Nadu Co-operative Societies Act, 1985 as regards the payment of interest. The said proposition is not in dispute but the only issue in this writ petition is whether the rate of interest awarded by the second respondent and confirmed by the third respondent is reasonable or not. In the decision of the Division Bench of this Court referred to supra, the Division Bench of this Court has given a clear finding in paragraph 12(ii)that "t*he Arbitrator passing award under section 90 of the Tamil Nadu Co-operative Societies Act, 1983 and the Co-operative Tribunal acting under Section 152 of the said Act have got absolute discretion to award interest at any reasonable rate not exceeding the contractual rate following the principles laid down by the Hon'ble Supreme Court in* ***N.M.Veerappa v. Canara Bank, 1998-2-L.W.26=1998 (1) CTC***

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***219.***"

13. In similar circumstances, this Court in the decision reported in **2013 (3) L.W 851** in the case of **P.Elias v. The Special Officer, Kumari District Tailoring Women Development Cottage Co-operative Society Ltd.,** while dealing with the dispute under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983, awarded interest at the rate of 3% per annum from the date of the award considering the age of the petitioner in that writ petition. The relevant portion of decision cited supra is reproduced hereunder:

> *"Considering his age and also the fact that this writ petition has been pending from 2003, I am inclined to direct the petitioner to pay the said amount, less a sum of Rs.63,000/- deposited already with interest at the rate of 3% per annum from the date of award. If the amount is not paid within a period of six months from the date of receipt of a copy of this order, the petitioner shall pay interest at the rate of 6% p.a. from the date of award instead of 3%."*

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14. Therefore, I also agree with the view of the learned Single Judge referred to supra that interest payable under the Tamil Co-operative Societies Act, may vary depending upon the facts and

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circumstances of the each and every case. This Court is therefore having the discretion to fix the rate of interest under the Tamil Nadu Co-operative Societies Act, 1983.

15. However, I am of the view that the interest at the rate of 3% per annum will be too low for the case on hand and the interest at the rate of 6% per annum will be reasonable considering the facts and circumstances of the present case.

16. Admittedly, after perusing the records and after hearing the submissions made by the learned counsel for both sides, it is found that

(a)there is no contract for payment of interest;

(b)there is no documentary evidence to establish that the petitioner has committed misappropriation of goods excepting that she has been terminated from service;

(c)the termination order terminating the services of the petitioner is also not placed before this Court by the first respondent;

(d)the third respondent, while confirming the award passed in

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A.R.C.No.184-94-95, has not given any proper reasons as to how the first respondent is entitled to interest at the rate of 20% per annum on the delayed payment from the petitioner; and

(e)neither the arbitrator nor the third respondent have given any reasons for allowing the payment of exorbitant interest at the rate of 20% per annum on the principal amount of Rs.1,16,520.75 from 25.7.1991 onwards.

17. I am of the view that the interest awarded at the rate of 20% per annum by the learned Arbitrator in A.R.C.No.184-94-95 is exorbitant. It is settled proposition of law that the interest awarded for the delayed payment must be reasonable. Considering the same, I am of the view that the interest at the rate of 6% per annum will be reasonable.

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18. In the result, the writ petition is partly allowed modifying the award dated 28.02.1995 passed in A.R.C.No.184-94-95 by the second respondent, which was confirmed by the third respondent by his judgment dated 28.03.2001 passed in C.T.A. No.6/96 by directing the petitioner to pay interest at the rate of 6% per annum

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instead of 20% per annum on the principal amount of Rs.1,16,520.75 from 25.7.1991 till 28.2.1995 being the date of the award. However, there shall be no order as to costs.

18.08.2017

Speaking/Non Speaking order
Index:Yes/No
Internet:Yes/No

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To

1.The Secretary,
North Arcot District Consumers
Co-operative Wholesale
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Officers Line,
Vellore.

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2.The Deputy Registrar of
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Vadivel Nagar, Vellore – 1.

3.The Principal District Court,
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Vellore District.

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**ABDUL QUDDHOSE, J.**

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**Order in**
**W.P.No.31665 of 2002**

**18.08.2017**
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